

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DAVID TARABOCHIA,

Petitioner,

v.

DOUG WADDINGTON,

Respondent.

Case No. C05-5516RJB

ORDER DENYING HABEAS
CORPUS RELIEF

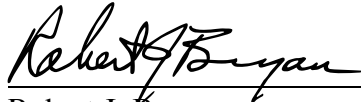
The Court has reviewed the Petition for Writ of *Habeas Corpus*, the related record, and the Report and Recommendation of United States Magistrate Judge Karen L. Strombom finding that Petitioner has failed to show that he is entitled to federal *habeas corpus* relief. Dkt. 25 at 6. Petitioner did not file objections to the Report and Recommendation.

To the extent that Petitioner's third claim is that he was denied the opportunity to offer defenses in mitigation at his sentencing hearing, this claim is without merit. He essentially argues that since he was not able to offer defenses in mitigation at his presentencing release revocation hearing, and since the trial court allegedly relied on the fact of that revocation in determining his sentence, the trial court thus effectively denied him his opportunity to present defenses in mitigation at his sentencing hearing. *See* Dkt. 19 at 5. This argument both incorrectly captures the process of his sentencing and incorrectly presumes that the trial court relied on the fact of his revocation in calculating his sentence. First, as Judge Strombom's Report and Recommendation notes, "the record in this case reveals petitioner was provided the opportunity to testify on his behalf at his actual sentencing." Dkt. 25 at 7. And, when Petitioner testified at his sentencing hearing, "he did not address the pre-sentencing work release revocation issue." *Id.* Second, as the state and federal courts that have reviewed the record have found, the trial court relied on factors

1 other than Petitioner's presentencing release revocation in calculating his sentence, and the trial court
2 would have imposed the same sentence regardless of the revocation. *See* Dkt. 25 at 6-7.

3 The Court hereby adopts the Report and Recommendation of the Magistrate Judge and orders that
4 the petition is DENIED. The Clerk is directed to send copies of this Order to Petitioner, Respondent's
5 counsel, and Magistrate Judge Karen L. Strombom.

6 DATED this 24th day of April, 2006.

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9 Robert J. Bryan
10 United States District Judge
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